



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/684,442	10/06/2000	Charles Eric Hunter	WT-11	2729
35856	7590	10/25/2004	EXAMINER	
LAVA GROUP LAW BY SMITH & FROHWEIN, LLC P.O. BOX 88148 ATLANTA, GA 30356			ELISCA, PIERRE E	
		ART UNIT		PAPER NUMBER
		3621		

DATE MAILED: 10/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/684,442	HUNTER ET AL. 
Examiner	Art Unit	
Pierre E. Elisca	3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 August 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8, 10-21, 23, 26 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-8, 10-21, 23 and 26-27 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

1. This Office action is in response to applicant's amendment, filed on 8/12/2004.
2. Claims 1-8, 10-21, 23 and 26-27 are pending.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8, 10-21, 23 and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kleiman (U.S. Pat. No. 5,959,945) in view of Looney et al (U.S. Pat. No. 5,969,283).

As per claims 1, 3-8, 12-15 and 21 Kleiman substantially discloses the claims system for distributing music to local electronic jukeboxes see., abstract, lines 1 and 2 (which is readable as Applicant's claimed invention wherein said a system for distributing music to customer households), comprising:

A data transmission system operable for blanket transmitting a plurality of music content items to customer households in digital form (see., abstract, lines 5-9);

A user station at each of a plurality of customer households, the user station including; means for said customer household to pre-select specific music content items

for temporary storage (see., abstract, lines 9-14, col 4, lines 21-31, col 6, lines 22-40, fig 1, lts);

Means for said system to pre-select specific music content items for temporary storage (or download the music) see., abstract, lines 9-17, col 4, lines 21-31, col 6, lines 22-40, fig 1);

A high capacity storage medium for temporarily storing selected music content items; and means for said customer household to select anyone of the selected music content items that are temporarily stored in the high capacity storage medium for recording (see., abstract, col 4, lines 21-31, col 6, lines 22-40, fig 1);

an audio output for outputting audio signals from the storage medium to a playback device so that the customer household may playback anyone of the selected music times (fig 1, abstract, col 4, lines 21-31, col 6, lines 22-40);

A communications link between each customer household and the central controller system to verify to the controller system (see., abstract, lines 5-17);

Billing system associated with the central controller system to bill customer households for selected music content items that have been recorded (see., col 5, lines 16-28). Kleiman fails to explicitly disclose that his central controller is for verifying when a preselected music selection has been made available. However, Looney discloses a music organizer and entertainment center wherein a CD-ROM and/or individual songs can include a special code or identification that is keyed to the user's system's code. In this manner only the user's system can load the songs on its hard drive, see., Looney, col 2, lines 51-54. Accordingly, it would have been obvious to a person of ordinary skill

in the art the time the invention was made to modify the music distribution of Kleiman by including the membership customer taught by Looney because this would provide the music distribution of Kleiman with the advantage of having an individual (ID or verification) for customers, the customer can have a library of music to playback in a variety of portable and fixed base units.

As per claims 2, 10, 11, 16-20, 23 and 26-27 Kleiman substantially discloses the claimed method for distributing music to local electronic jukeboxes via satellite see., abstract, lines 1 and 2, col 7, lines 38-45 (which is readable as Applicant's invention wherein said a system for distributing music to customer households), comprising:

Blanket transmitting a plurality of music content items to customer households by direct broadcast satellite at data transmission rates faster than real time (see., abstract, col 7, lines 10-58, fig 1);

Providing each customer household with information available music content items that will be transmitted (see., abstract, lines 9-17, col 4, lines 21-31, col 6, lines 22-40, fig 1);

Permitting said each customer household to preselect specific items of the music content items for temporary storage on a high capacity storage medium ;Permitting said each customer household to playback recorded music selections; permitting said each customer household to permanently record items that are temporarily stored on the high capacity storage medium (see., abstract, col 4, lines 21-31, col 6, lines 22-40, fig 1);

Communicating music playback information from said each customer household to a central controller system (see., abstract);

Billing said customer households fro the recorded music selections that are made available for playback (see., col 5, lines 16-28). It is to be noted that Kleiman fails to explicitly disclose the step of identifying available music selections that will be transmitted. However, Looney discloses a music organizer and entertainment center wherein a CD-ROM and/or individual songs can include a special code or identification that is keyed to the user's system's code. In this manner only the user's system can load the songs on its hard drive see., Looney, col 2, lines 51-54. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the music distribution of Kleiman by including the limitation detailed above as taught by Looney because this would provide the music distribution of Kleiman with the advantage of having an individual ID for customers, the customer can have a library of music to playback in a variety of portable and fixed base units.

RESPONSE TO ARGUMENTS

5. Applicant's arguments filed on 8/12/2004 have been fully considered but they are not persuasive. Necessitated by amendment filed on 8/12/2004.

REMARKS

6. In response to Applicant's arguments, Applicant argues that the prior art of record taken alone or in combination fail to anticipate or render obvious the recited feature:

a. Applicant argues that Kleiman describes "a jukebox scenario in which music can be down loaded in to the jukebox and be purchased. However, Kleiman does not describe downloading music content items for temporary storage and permanently recording the music content items". As indicated above, Kleiman discloses records that are stored locally at the jukebox and are physically selected and played with these jukeboxes. The user views a display (DISPLAY OR temporary storage) listing song selections contained in each record, during which time the jukebox can also download the music (see., abstract, col 1, lines 1-67, col 2, lines 1-67). Applicant should note that in order for the user to view or display music, a temporary storage such as a buffer or memory is needed. Therefore, Applicant's argument is not persuasive.

b. "a billing system or process that is based on permanently recording music content items". However, the Examiner respectfully disagrees with this assertion since Kleiman clearly discloses this limitation in col 5, lines 16-28.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pierre E. Elisca whose telephone number is 703 305-3987. The examiner can normally be reached on 6:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 703 305-9769. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 09/684,442
Art Unit: 3621

Page 8



Pierre Eddy Elisca

Primary patent Examiner

October 19, 2004